IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.2502 OF 2004
IN WRIT PETITION NO.7693 OF 2003

The Bank of Rajasthan Limited ..Applicant

Vs.

K.J.Construction Company ..Respondent

Mr.Ajit Ahekar Advocate i/b. Paras Kuhad & Associates for the Applicant

Mr. C.R.Dalvi Advocate for the Respondent

CORAM: R.M.S.KHANDEPARKAR,J.
DATED: 14TH OCTOBER, 2004

P.C.

1. Taken up on Board on request of the Advocates for the parties.

2. The contention which was sought to be raised by the respondent at the time of passing the order on 12th October, 2004 rejecting the request for extension of period to vacate the premises by two weeks does not appear to be well founded in as much as that undisputedly, there is a litigation pending between the parties to ascertain the exact liability in relation to the rent amount payable by the applicant to the respondent in relation to the suit premises before the competent Court and the final decision in that regard is to be taken. Being so, it is too premature to accept the contention of the

respondent/opponent that the applicant has violated the undertaking given to the Court in relation to the payment of rent.

3. Since the order dated 12th October, 2004 rejecting the request for extension of time was passed solely on the basis of non-compliance of the undertaking by the applicant in relation to the payment of rent, as rightly submitted by the learned Advocate for the applicant, at this stage the order dated 12th October, 2004 needs to be recalled and is hereby recalled.

4. Considering the facts disclosed in the application and as the extension asked for is only for a period of two weeks from 12th October, 2004, I am inclined to grant the same subject to furnishing an undertaking by the applicant that on or before 3rd November, 2004, the applicant shall deliver peaceful and vacant possession of the suit premises to the respondent, and in the meanwhile, shall not part with the possession nor shall create any third party interest in any manner whatsoever in the suit premises and further shall pay the dues whatever the applicant is legally liable to pay till that time to the respondent. The undertaking to be filed before the Additional Registrar (J) on or before 18th October, 2004. In case of failure on the part of the applicant to submit the undertaking, the order passed

today granting extension for delivery of possession shall stand automatically vacated without reference to the Court.

5. The civil application accordingly stands disposed of.

(R.M.S.KHANDEPARKAR,J.)